

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Final Decision**

**June Wisniewski and Dorothy Bukowski  
Complainants**

**GRC Complaint No. 2002-83**

**v.**

**Union County Surrogate's Office  
Custodian of Record.**

**Decision Issued: June 12, 2003  
Decision Effective: June 12, 2003**

At its June 12, 2003 public meeting, the Government Records Council considered consolidated Complaints #2002-83 filed pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq. The requestors sought access to six records alleged to exist in the County Surrogate's files concerning certain named individuals' wills and estates. The requestors claim the Surrogate's office is only "quasi-judicial" in nature and that the records in the Surrogate's case files are accessible under OPRA.

The Council considered the Complaint, submissions from the requestors dated March 31 and April 29, 2003, and the Findings and Recommendations of the Executive Director dated June 12, 2003. The Findings and Recommendations concluded that the Surrogate's office is part of the judiciary of the State of New Jersey and that, therefore, the case files in the Surrogate's office sought by the requestors are not subject to OPRA pursuant to N.J.S.A. 47:1A-7(g).

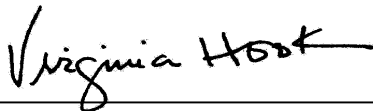
By affirmative vote of four council members on June 12, 2003, the Council adopts and incorporates herein the June 12, 2003 Findings and Recommendations of the Executive Director and hereby dismisses the Complaint for lack of jurisdiction.

A copy of this Decision shall be provided to the requestor, the custodian, and all counsel of record.



Vincent Maltese, Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council:



VIRGINIA HOOK, Secretary  
Government Records Council

Dated: June 12, 2003

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendation of Executive Director  
June 12, 2003**

**June Wisniewski and Dorothy Bukowski  
Complainants**

**v.**

**Union County Surrogate's Office  
Custodian of Record.**

**GRC Complaint No. 2002-83**

**Relevant Record(s) Requested:** Various records contained in Surrogate case files

**Request made:** August 8, 2002

**Custodian:** James S. LaCorte, Surrogate

**Request denial:** August 12, 2002

**GRC Complaint filed:** November 4, 2003

**Executive Director's Recommendation**

This OPRA request filed August 8, 2002 with the Union County Clerk's office seeks six records alleged to exist in the County Surrogate's files concerning certain wills and estates. The requestors claim the Surrogate's office is only quasi-judicial in nature and that the records in the Surrogate's files are subject to OPRA. The Executive Director concludes that the Council lacks jurisdiction over the complaint because OPRA does not apply to the judiciary and the Surrogate and the Surrogate's office are part of the State's judiciary. For this reason, the Executive Director recommends that the Council dismiss the complaint.

**Statements of Facts**

The Union County Clerk's office referred the request to the Surrogate's office by memo dated August 9, 2002. The request was for six documents allegedly contained in the Surrogate's files pertaining to either probate of the Estate of Joseph Wisniewski or litigation entitled "Alleged Will of A. Leo Korona." By letter dated August 12, 2002, Surrogate James S. LaCorte provided access to one record (a court order) and advised the requestors that four other documents described did not exist. The Surrogate denied access to the remaining record, a July 14, 1992 memo to Edward W. Beglin, A.J.S.C., from former Deputy Surrogate Robert Lenahan concerning the Wisniewski case. The parties subsequently filed separate but identical complaints with the Council. The two complaints are being treated as a single complaint.

The requestors have been seeking a copy of the Lenahan memo since 1995, when a copy was inadvertently shown to them during their inspection of the Surrogate's Wisniewski file on May 22, 1995.

Council staff referred the requestors to the Administrative Office of the Courts (AOC) so the parties could discuss possible settlement. However, council staff advised the requestors that the Surrogate's office was part of the State's judicial branch and thus not subject to OPRA. Subsequent discussions between the requestors and the AOC did not resolve the matter, and the requestors asked the GRC to adjudicate their complaints.

In a Statement Of Information dated April 1, 2003, the custodian alleges that the Council lacks jurisdiction over the Complaint and cites a February 5, 2003 memorandum to "Surrogates" from Richard Williams, J.A.D., Administrative Director of the Courts, advising that the Surrogate and the Surrogate's office are part of the judiciary and, as such, Surrogate records are not subject to the Open Public Records Act. Additionally, the custodian asserts the Lenahan memo is confidential "work product" because it is the substantive equivalent of a memorandum from a law clerk to a judge. The custodian reiterated that the remaining documents sought do not exist, with the exception of court orders, which were provided the requestors.

In responses dated March 31 and April 29, 2003, the requestors allege that the Surrogate is only a quasi-judicial office and that, in any event, the Surrogate "waived" any exemption belonging to the Lenahan memo once it was displayed to June Wisniewski during an inspection of Surrogate files on May 22, 1995. The requestors also contest the Surrogate's statement that other records sought do not exist.

### **Analysis and Conclusion**

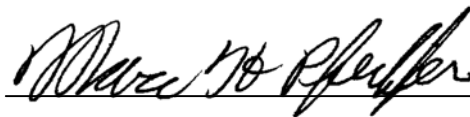
Since 1990, all functions of the Surrogate and any surviving vestige of the "Surrogate's Court" have been transferred to the Superior Court of New Jersey, Chancery Division, Probate Part, for which the Surrogate serves as deputy clerk. This clearly makes the Surrogate, regardless of the historic role of the Surrogate or "Surrogate Court," part of the Judicial Branch of government.

Thus, while the requestors have alleged that the Surrogate is a "quasi-judicial" office, New Jersey law treats the surrogate as a full member of the judiciary. The fact that the Surrogate is elected and not appointed does not remove the Surrogate or the surrogate's office from the judicial branch.

Applying this analysis to OPRA, N.J.S.A. 47:1A-7(g) states: "The council shall not have jurisdiction over the Judicial or Legislative Branches of State Government or any agency, officer, or employee of those branches." Further confirming this legislative intention to exclude the judiciary, is the definition of a "public agency," the terms "Executive Branch" and "Legislative Branch." A definition for "Judicial Branch" is conspicuously absent from OPRA.

The foregoing leads the Executive Director to conclude that the Surrogate or "Surrogate's Court" is part of the State's Judicial Branch, and as such, the records requested by the requestor are not subject to the Open Public Records Act. Since the Council does not have jurisdiction over this Complaint, it should be dismissed.

Finally, since the Council does not have jurisdiction to resolve the question of access, the requestors may apply in Superior Court to access the records under a common law theory. Such an application is neither discouraged nor endorsed.

A handwritten signature in black ink, reading "Marc H. Pfeiffer", is written over a horizontal line.

Marc H. Pfeiffer, Acting Executive Director  
Government Records Council

Dated: June 12, 2003